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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 BIRDDOG TECHNOLOGY
18 LIMITED, an Australian company;
19 and BIRDDOG AUSTRALIA PTY,
20 LTD, an Australian company,

Plaintiffs,

v.

21 2082 TECHNOLOGY, LLC DBA
22 BOLIN TECHNOLOGY, a California
23 limited liability company; BOLIN
24 TECHNOLOGY CO., LTD., a Chinese
individual; HOI "KYLE" LO, an
individual; JENNIFER LEE, an
individual; and DOES 3 through 25,
inclusive,

Defendants.

Case No. 2:23-cv-09416 CAS (AGRx)

**PLAINTIFFS BIRDDOG
TECHNOLOGY LIMITED'S AND
BIRDDOG AUSTRALIA PTY LTD'S
RESPONSE TO DEFENDANTS'
OBJECTION AND REQUEST TO
STRIKE IN SUPPORT OF
PLAINTIFFS' REPLY IN SUPPORT
OF APPLICATION FOR RIGHT TO
ATTACH ORDER AND WRIT OF
ATTACHMENT**

Judge: Hon. Alicia G. Rosenberg
Date: January 30, 2024
Time: 10:00 a.m.

1 Plaintiffs respectfully object to Defendants 2082 Technology, LLC dba Bolin
 2 Technology (“Bolin LLC”) and Hoi “Kyle” Lo’s (“Lo,” collectively, “Defendants”)
 3 frivolous Objection and Request to Strike Evidence and Arguments Submitted by
 4 Plaintiffs in their Reply (the “Surreply”).

5 **A. Defendants’ Improper Surreply Should Be Stricken From The**
 6 **Record**

7 It is Defendants’ surreply that it is improper and that should be stricken. Under
 8 the Local Rules, “[a]bsent [a] prior written order of the Court, the opposing party
 9 shall not file a response to the reply.” L.R. 7-10. “The decision to grant or deny leave
 10 to file a surreply is committed to the sound discretion of the court.” *Baxter Bailey &*
 11 *Assocs. v. Ready Pac Foods, Inc.*, No. CV 18-8246 AB (GJSX), 2020 WL 3107889,
 12 2020 WL 3107889, at *1 (C.D. Cal. Feb. 14, 2020) (*quoting Schmidt v. Shah*, 696 F.
 13 Supp. 2d. 44, 59 (D.D.C. 2010)). “Although the Court may in its discretion allow the
 14 filing of a surreply, this discretion should be exercised in favor of allowing a surreply
 15 only where a valid reason for such additional briefing exists, such as where the
 16 movant raises new arguments in its reply brief.” *Baxter Bailey & Assocs.*, 2020 WL
 17 3107889, at *1 (*quoting Hill v. England*, No. CVF05869RECTAG, 2005 U.S. Dist.
 18 LEXIS 29357, 2005 WL 3031136, at *1 (E.D. Cal. Nov. 8, 2005)).

19 There is no dispute that Defendants failed to request leave to file a surreply.
 20 The Surreply is improper and should be stricken for this reason alone.

21 **B. Plaintiffs’ Reply Does Not Raise New Evidence or Argument**

22 Painting with a vague, ill-defined and broad brush, Defendants fail to identify
 23 what, exactly, they object to in Plaintiffs’ Reply. The reason for this is clear: there
 24 is nothing objectionable about it. Indeed, the thrust of Plaintiffs’ reply - Mr. Lo’s
 25 written representations that **“Bolin Technology is a 2082 Technology LLC**
Company” evidencing the reality that he has submitted false testimony to this Court
 26 - were submitted with Plaintiffs’ Application. Dkt. 37, at 1 (citing Dkt. 25-4, Ex. H
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 28

1 at 1, 6-8). That Defendants missed these impeaching facts does not make pointing
 2 to them in reply “new” or otherwise improper. And even were that not the case,
 3 evidence that is submitted in direct response to the opposition’s evidence and
 4 arguments is not new evidence. *Sound of Color, LLC v. Smith*, 2023 WL 5667573, at
 5 *1 (C.D. Cal. July 11, 2023) (holding response to defendants’ reply would be
 6 improper because defendants’ arguments were not “new” where they “respond[ed]
 7 directly to evidence and arguments raised in the opposition”); *Pineda v. Sun Valley
 8 Packing, L.P.*, 2022 WL 1625066, at *3 n.3 (E.D. Cal. May 23, 2022) (same); *Chloe
 9 SAS v. Sawabeh Info. Svcs. Co.*, 2015 WL 12734005, at *2 (C.D. Cal. June 3, 2015)
 10 (same); *see also Terrell v. Contra Costa Cnty.*, 232 Fed. Appx. 626, 629 n.2 (reply’s
 11 evidence was not new where it provided full context to the opposition’s “selected
 12 recitation of the facts”).¹

13 What Defendants cannot dispute is that all of Plaintiffs’ reply evidence is
 14 submitted in direct response to arguments in Defendants’ Opposition. Defendants
 15 base their Opposition on a falsehood: that Bolin Technology Co. Ltd. (“Bolin
 16 Limited”) is a separate legal entity from Bolin LLC and that Plaintiffs’ Applications
 17 are solely based on agreements with Bolin Limited. (*See e.g.*, Opp. at 6, 14-15).
 18 Plaintiffs are entitled to rebut these falsehoods in Reply.² Because Plaintiffs’
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20 ¹ The cases cited by Defendants are inapposite, as they do not address situations
 21 where the reply’s evidence *responds* to the opposition’s evidence. *See e.g.*, *U.S. ex
 22 rel. Giles v. Sardie*, 191 F. Supp. 2d 1117 (C.D. Cal. 2000); *Schwartz v. Upper Deck
 23 Co.*, 183 F.R.D. 672 (S.D. Cal. 1999); *Provenz v. Miller*, 102 F.3d 1478 (9th Cir.
 1996); *Litmon v. Santa Clara Cnty.*, 2008 WL 2242307 (N.D. Cal. May 29, 2008).

24 ² Moreover, Defendants’ Objection and Request to Strike purposefully
 25 mischaracterizes Plaintiffs’ Reply by claiming that Plaintiffs’ Reply raises new
 26 arguments and submits new evidence regarding an alter ego theory of liability. (Dkt.
 27 42 at 2). Yet, nowhere in Plaintiffs’ Reply did Plaintiffs refer to an alter ego theory
 28 of liability, (*see generally* Reply), and Plaintiffs explicitly state that Defendant Bolin
 Technology Co., Ltd.’s liability will be separately “adjudicated in connection with
 Plaintiffs’ First Amended Complaint.” (Reply at 7).

1 evidence directly responds to arguments in Defendants' Opposition, Defendants do
 2 not, and cannot, point to any new evidence in Plaintiffs' Reply.

3 What is perhaps most striking about Defendants' Surreply, however, is what
 4 is missing from it. For even as they (wrongly) complain of having been "depriv[ed]
 5 of the opportunity to respond" (Dkt. 42, at 4), Defendants do not bother to ask the
 6 Court for such an opportunity or to so much as identify what it is they would say or
 7 what evidence they would provide if provided with that opportunity. Instead, they
 8 claim that the grave matter of the security of the undisputed amount of money that
 9 has been stolen from Plaintiffs should "await[] the appearance" and "substantive
 10 opposition" of "newly named Defendant[s]." *Id.* Not so. Plaintiffs' stolen money
 11 is in the control of Defendants ***and*** the newly named Defendants. An appropriate
 12 attachment must issue as to all culpable parties - starting with the Defendants here.

13 For these reasons, the Court should grant Plaintiffs' Application in its entirety
 14 and strike from the record Defendants' Surreply.

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Respectfully submitted,

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K&L GATES LLP

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Dated: January 25, 2024

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By: /s/ Ryan Q. Keech

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